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REC'D TN  
REGULATORY AUTH.

Guy M. Hicks  
General Counsel

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August 10, 1999  
OFFICE OF THE  
EXECUTIVE SECRETARY

VIA HAND DELIVERY

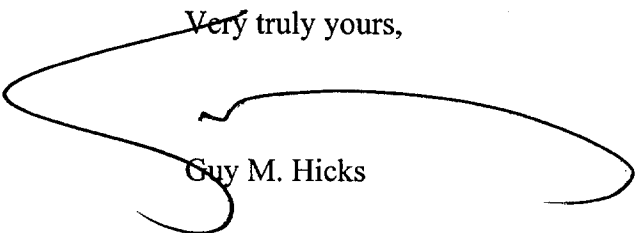
David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Proceeding for the Purpose of Addressing Competitive Effects of Contract Service  
Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee*  
Docket No. 98-00559

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to Consumer Advocate Division's Motion to Publicize. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH:ch  
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**Nashville, Tennessee**

In Re:       *Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee*  
Docket No. 98-00559

*BellSouth Telecommunications, Inc.'s Tariff to Offer Contract Service Arrangement TN98-6766-00 for Maximum 13% Discount on Eligible Tariffed Services*  
Docket No. 98-00210

*BellSouth Telecommunications, Inc.'s Tariff to Offer Contract Service Arrangement KY98-4958-00 for an 11% Discount on Various Services*  
Docket No. 98-00244

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**RESPONSE TO CONSUMER ADVOCATE DIVISION'S**  
**MOTION TO PUBLICIZE**

On September 16, 1998, the Tennessee Regulatory Authority issued a Protective Order that applies to this docket, *see* Protective Order entered in Docket No. 98-00559 ("Protective Order"), and neither the CAD nor any other party appealed the Order. Nearly eleven months later, the CAD has filed a rather vague Motion seeking to "publicize" various proprietary documents and testimony addressing these documents. As explained below, BellSouth has no objection to the CAD's use of any of these documents during next week's hearing pursuant to Paragraph 9 of the Protective Order. To the extent that the CAD seeks to "publicize" these documents in any manner prohibited by the Protective Agreement, however, BellSouth urges the TRA to deny the CAD's Motion so the parties can focus on the issues immediately before the TRA: whether the sophisticated business customers which are parties to CSA Nos. KY98-4958-00 and TN98-6766-00 should continue to be denied the benefits of the bargain they negotiated months ago.

**1. The Protective Order Provides a Mechanism for the CAD to Address the CSAs it Contends are Public Records.**

The CAD devotes the first ten paragraphs of its Motion discussing copies of CSAs between BellSouth and one or more "public colleges and universities." *See* Motion at ¶2. The CAD states it independently secured copies of these CSAs from the colleges and universities that are parties to the particular CSAs, and it apparently seeks permission to "publicize" such documents. Paragraph 11 of the Protective Order provides that:

Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) the subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is know or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

During Thursday's pre-hearing conference, the CAD should be required to demonstrate that the specific CSAs it wishes to "publicize" satisfy one of these elements. If the CAD meets its burden of proof, then the CAD clearly may "use or disclose" such CSAs.<sup>1</sup>

**2. The TRA Should Deny the CAD's Request to "Publicize" Any Other Documents.**

The Protective Order permits the CAD to use information BellSouth has designated as confidential "in testimony at the hearing of this proceeding," and it allows the CAD to offer such

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<sup>1</sup> The CAD's assertion that "BellSouth's confidentiality stamp" is "an illegal contract provision" is laughable. The TRA clearly has jurisdiction to enter a Protective Order, *see, e.g.*, T.C.A. §4-5-311(a), and BellSouth's designation of documents as "confidential" pursuant to the terms of the Protective Order is neither illegal nor otherwise inappropriate. On a similar note, the CAD's reference to "an otherwise undisclosed agreement with the Tennessee Regulatory Authority Staff to make all terms and conditions of its future contract filings public" is misleading at best. Although BellSouth is aware of no obligation to "disclose" this agreement to the CAD, it certainly made no attempt to conceal the agreement. In fact, BellSouth memorialized the agreement in a letter to the Staff, and this letter is in the public files of the TRA for anyone to see.

information into evidence if the CAD follows the notice procedures set forth in the Order "so that appropriate measures can be taken . . . to protect the confidential nature of the information." *See* Protective Order, ¶9. BellSouth has no objection to the CAD's use of documents that BellSouth has designated as confidential during the hearing next week in compliance with this Paragraph. To the extent that the CAD seeks to "publicize" the documents it purportedly identifies in its Motion in any other manner, however, BellSouth objects to the Motion.

Neither the CAD nor other parties to this docket are harmed by maintaining the status quo: all parties to this docket may use such information during hearing pursuant to the terms of the Protective Order. BellSouth, however, would suffer competitive harm if it were required to "publicize" documents that reveal BellSouth's competitive strategies and its negotiation processes to the general public (including its competitors, who clearly do not "publicize" their analogous strategies and processes).

Respectfully submitted,

BELL SOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

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☐ Mail  
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☐ Overnight

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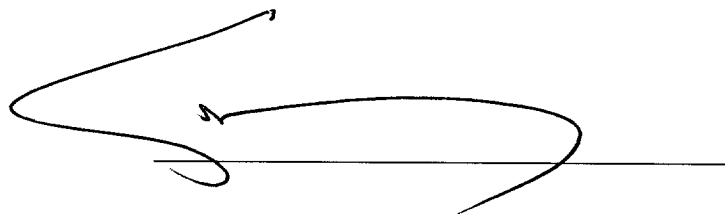
Vance Broemel, Esquire  
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Val Sanford, Esquire  
Gullett, Sanford, et al.  
230 4<sup>th</sup> Ave., N., 3<sup>rd</sup> Fl.  
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Nashville, TN 37219-8888

A handwritten signature in black ink, appearing to be "Val Sanford", written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke.